



GERALD C. MANN
~~FRANCIS DANIEL~~
ATTORNEY GENERAL

**THE ATTORNEY GENERAL
OF TEXAS
AUSTIN, TEXAS**

Honorable Adam R. Johnson
Executive Director
State Department of Public Welfare
Austin, Texas

Dear Sir:

Opinion No. 8-1389
Re: Old Age Assistance Division
of State Department of Public Welfare
Appropriation, S.B. No. 427,
Acts 46th Leg., Reg. Sec.

We are in receipt of your letter of September 6, 1939,
wherein you request the opinion of this Department upon the following questions:

"We desire to call your attention to that part of Senate Bill No. 427, Acts, 46th Legislature, Regular Session, which makes appropriations for the State Department of Public Welfare, and particularly to the appropriations that are set out for the Division of Old Age Assistance.

"In this connection your attention is called to the special riders in that part of the Appropriation Bill that gives the State Department of Public Welfare certain powers insofar as the expenditure of funds for Old Age Assistance and its administration is concerned.

"1. Is the State Department of Public Welfare authorized by provisions of Senate Bill No. 427, Acts, 46th Legislature, Regular Session, to make expenditures for administrative expenses, including salaries and maintenance and miscellaneous expenses, in excess of those particular items that are specifically enumerated in the said Senate Bill No. 427?

"2. Is the State Department of Public Welfare authorized to create new positions or redefine and consolidate existing positions and fix salary schedules for all positions, so long as administrative expenditures do not exceed the per cent limitation in Senate Bill No. 427?

"3. Should the amount of monies that are authorized and appropriated to be expended by the Department of Public Welfare for administrative expenses for the Division of Old Age Assistance be determined each month and expenditures in any month be limited to one-twelfth of the total appropriations for the Division of Old Age Assistance for a fiscal year, or is the Department authorized to use its discretion in determining the amount of administrative expenses that should be incurred from time to time, so long as the total administrative expenses does not exceed the amounts allowed to be expended for administrative purposes for the biennium ending August 31, 1941?

We confine our opinion to the Old Age Assistance Division of the Department of Public Welfare.

Senate Bill No. 36, Acts, 44th Legislature, Regular Session, provides for the creation of the State Department of Public Welfare and combines under the control of said Department the functions and duties theretofore performed by several separate divisions of the State government. Said Act also authorizes the Executive Director, with the approval of the Board of Public Welfare, to classify positions, fix objective standards and salary schedules subject to the appropriation bill and to allocate and re-allocate functions among the various divisions of the Department.

Senate Bill No. 427, Acts of the Forty-Sixth Legislature, Regular Session, being the Departmental Appropriation Bill, divides the State Department of Public Welfare appropriation into the "Division of Old Age Assistance," to be paid out of the Texas Old Age Assistance Fund as transferred to the State Department of Public Welfare Fund by Senate Bill No. 36, Acts of the Forty-Sixth Legislature, Regular

Session; "General Relief Division" to be paid out of the General Fund. Each division contains itemized numbered appropriations for personnel and in addition thereto itemized numbered appropriations for various purposes under the heading of "Maintenance and Miscellaneous."

The itemization for the Division of Old Age Assistance is followed by a special rider which provides:

"All income to the Texas Old Age Assistance Fund, as transferred to the State Department of Public Welfare by S.B. No. 36, Acts, 44th Legislature, Regular Session, together with any balances on hand at the end of a prior fiscal year, is hereby appropriated for each of fiscal years ending August 31, 1940 and August 31, 1941 to the State Department of Public Welfare for old age assistance and for salaries, equipment, supplies, travel, maintenance, and contingent expenses necessary in the extension of said old age assistance and in administering all the duties required of said Department by the Old Age Assistance Laws, and for payment of interest-bearing warrants or State Treasury Certificates exchanged therefor, together with interest thereon, outstanding on August 31, 1939, that were issued against the Texas Old Age Assistance Fund under the provisions of H.B. No. 37, Acts of the 44th Legislature, 3rd C.S., and under the provisions of H.B. 179, Acts of the 46th Legislature, Regular Session, in accordance with schedule of payments as authorized and directed in H.B. No. 179 and H.B. No. 1046, Acts, Regular Session, 46th Legislature, and in accordance with appropriations made for payment of such warrants or certificates in H.B. 179 and H.B. No. 1046, Acts, Regular Session, 46th Legislature; provided, that for the administration of the Old Age Assistance Laws the administrative expenses out of State funds for the biennium shall never exceed five per cent (5%) of the total amount expended for assistance out of all funds, State and Federal. Provided, further, that in addition to this appropriation out of State funds for administrative expenses for the biennium, the Department is authorized to accept from the Federal Social Security Board any funds that may be allocated by said Board to the Department for administrative expenses, and said Department can use such Federal funds allocated for administrative expenses in addition to funds appropriated for these purposes out of State funds. Provided, further, that aid and

assistance shall be granted and extended in the manner provided by law. In the event the above total itemized appropriations out of State funds for administration are less than five per cent (5%) of the total expenditures for assistance out of all funds, State and Federal, and a necessity therefor exists, the Department is authorized to hire additional employees; provided, in all events the total expenditures out of State funds for administration shall not exceed five per cent (5%) of the total expenditures for assistance out of all funds, State and Federal, and that no additional employees used shall be paid larger salaries than are above fixed for employees rendering similar services; provided, that this appropriation out of the Old Age Assistance Fund, as transferred to the State Department of Public Welfare Fund by S.B. No. 36, Acts, 46th Legislature, Regular Session, shall be in effect during the biennium ending August 31, 1941. . . ."

The following rider appears at the end of the appropriation for the State Department of Public Welfare:

"Provided, that the State Department of Public Welfare in assuming the rights, powers, and duties of the Texas Old Age Assistance Commission, the Child Welfare Division of the Board of Control and the Texas Relief Commission, pursuant to the provisions of Senate Bill No. 36, Acts, 46th Legislature, Regular Session, is empowered and directed to use the appropriations made in this Act for administration expenses for the purposes of the Divisions for which said appropriations were made and the State Department of Public Welfare is hereby empowered to coordinate the activities of these Divisions, when, on September 1, 1939, their rights, powers, and duties are so assumed, to effect an efficient and economical administration of the Public Welfare Act of 1939; provided further that the State Department of Public Welfare is authorized and shall have the right to consider and use the said appropriations for the purposes of creating and redefining positions and for transferring duties of positions hereby created or hereafter to be created, provided further that none of the rights, powers and duties herein created and delegated

shall be exercised by any department or board except by the State Department of Public Welfare and none of the appropriations herein made shall be expended except by said Department and the consent and approval of the State Board of Public Welfare as to policy shall be necessary before any expenditures can be made under these appropriations; provided further that no monies herein appropriated shall be expended by the State Department of Public Welfare for aid to Dependent and Destitute Children or for aid to the Needy Blind or for administrative expenses in connection with the granting of such aid, but all expenditures of monies herein appropriated shall be for purposes of meeting administrative expenses for Child Welfare Services, general relief activities and assistance to the needy aged and for payment of aid and assistance to the needy aged and payment of other obligations heretofore incurred against the Texas Old Age Assistance Fund, as such appropriations are specifically made and enumerated herein, to be expended by the State Department of Public Welfare."

A rider to the General Departmental Appropriation Bill provides as follows:

"The appropriations herein provided are to be construed as the maximum sum to be appropriated to and for the several purposes named herein, and the amounts are intended to cover and shall cover the entire costs of the respective items and the same shall not be supplemented from any other source; and, except as otherwise provided, no other expenditures shall be made, or shall any other obligations incurred by any department of this State, provided however that nothing herein shall prevent any department head from paying less than the maximum amount set forth herein for any salary provision."

It was held in our opinion No. 9-1321, Conference Opinion No. 1082, addressed to the Honorable W. Lee O'Daniel, that special riders or provisions applicable to particular departments are controlling over the general provision appearing at the end of the Departmental Appropriation Bill. The above quoted rider of the Division of Old Age Assistance Appropriation specifically provides that in the event the itemized

appropriation out of State Funds for administration is less than five per cent of the total expenditures for assistance out of all funds, State and Federal, and a necessity therefore exists, the State Department of Public Welfare is authorized to hire additional employees. It is clear that if a necessity exists and the Department has administrative expense money available for hiring additional employees it is not limited to the employees itemized in the Departmental Appropriation Bill.

It is our opinion that the Department of Public Welfare is authorized to hire employees in addition to those itemized in the Departmental Appropriation Bill for the Old Age Assistance Division if a necessity therefor exists, subject to the five per cent limitation upon the amount of money available for administrative expenses and that such employees shall be paid in conformity with the salaries fixed in the itemization for similar positions.

It is apparent that a consolidation of the functions and duties of various boards and departments under the State Department of Public Welfare was for the purpose of promoting greater economy and efficiency in performing these governmental functions. The detailed operation necessary to adequately effect an economic co-ordination of the various functions being of such a nature that they could not all be foreseen and specifically provided for, the Legislature allowed a rather broad discretion in the State Board of Public Welfare with reference to the funds appropriated in the Departmental Appropriation Bill. We call attention to that part of the rider appearing at the end of the appropriation for this Department which provides:

"Provided that the State Department of Public Welfare in assuming the rights, powers and duties of the Texas Old Age Assistance Commission, the Child Welfare Division of the Board of Control and the Texas Relief Commission pursuant to the provisions of Senate Bill No. 16, Acts, 46th Legislature, Regular Session, is empowered and directed to use the appropriations made in the Act for administrative expenses for the purposes of the divisions for which said appropriations were made and the State Department of Public Welfare is hereby empowered to co-ordinate the activities of these Divisions . . . to effect an efficient and economical administration of the Public Welfare Act of 1939; provided

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further that the State Department of Public Welfare is authorized and shall have the right to consider and use the said appropriations for the purposes of creating or redefining positions and for transferring duties of positions hereby created or hereafter to be created . . ."

It seems apparent that the Legislature contemplated that the Department could redefine positions and transfer duties within a Division of the Department to effect an efficient co-ordination and economical administration.

It is our opinion that the State Department of Public Welfare is authorized to create new positions or redefine and consolidate existing positions and fix salary schedules, within the Old Age Assistance Division provided, however, that no additional employees used shall be paid larger salaries than are fixed in the itemization for employees rendering similar services and that no salaries for these positions itemized in the bill may be paid in excess of the fixed salaries.

We have not, in this opinion, answered that part of your first question which relates to making additional expenditures for maintenance and miscellaneous expenses and your third question which may be affected by the answer to the first. Many serious questions arise in the consideration of your request pertaining to additional maintenance and miscellaneous expenses and the matter is of such importance that we do not feel justified in giving it a hasty answer. Knowing that you desire an early answer to the foregoing questions so that your reorganization may proceed, we have taken the liberty to submit partial answers and withhold the remainder for further consideration.

Yours very truly

ATTORNEY GENERAL OF TEXAS

CCC:M

APPROVED SEP 14, 1939

(Sgd.) Gerald G. Mann

ATTORNEY GENERAL OF TEXAS

By (Sgd.) Cecil C. Cammack
Assistant

APPROVED-OPINION COMMITTEE

BY EWB

CHAIRMAN